IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7704 OF 2004

1. Shri Vilas Shankarrao Pingale,)
aged about 54 years, Occ: Agril.)

2. Shri Mohit Vilas Pingale,)
aged about 29 years,)
Occ:Business)

3. Shri Abhinay Vilas Pingale,)
aged about 27 years,)
Occ: Student, All residing at)
Survey No.26, Koregaon Park,)
Pune 411 001.).. Petitioners
(Org.Plaintiffs)

Vs.

Messers Khyber Restaurant,)
(A partnership firm having)
registered office at 1258/A1,)
J.M.Road, Shivaji Nagar,)
Pune 411 004, through its partner)
Shri Tarun Uprant Chada, aged about)
54 years, Occ: Business,)
residing at 1258/A/1, J.M.Road,)
Shivaji Nagar, Pune 411 004.).. Respondents.
(Ors.Defendants)

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Shri K.N.Kore for the petitioners.

Shri S.J.Rairkar for the respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 4th OCTOBER, 2004.

Oral Judgment:

1. Heard the learned advocates for the parties.

Rule. By consent, the rule is made returnable

forthwith.

2. The petitioners challenge the order dated 23rd August, 2004 passed by the lower appellate Court rejecting the application for amendment filed by the petitioners. By the said application, the petitioner had sought to amend the plaint by incorporating therein the additional ground for eviction of the respondent i.e. the ground of sub- letting the suit premises. It is the case of the petitioners that they learnt about the letting out of the suit premises by the respondent during the pendency of the appeal and after disposal of the suit.

3. The lower appellate Court, after hearing the parties, rejected the application for amendment on the ground that merely because a person is found sitting in the suit shop, that would not be a ground for eviction of the respondent from the suit shop on the ground of sub-letting, besides that the petitioners can file an independent suit on the alleged ground.

4. Placing reliance in the decisions of the Apex Court in **Pankaja & Anr. v. Yellappa (Dead) By LRs. & Ors.,** reported in (2004)6 SCC 415, in **Sampath Kumar v. Ayyakannu & Anr.,** reported in AIR 2002 SC 3369,

and **Jayanti Roy v. Dass Estate Pvt.Ltd.,** reported in (2002) 5 SCC 175 as well as in **Prem Bakshi & Ors. v. Dharam Dev & Ors.,** reported in (2002) 2 SCC 2, it was sought to be contended by the petitioners that the law on the point of amendment is well settled and the courts below have to be liberal in granting amending to the pleadings, and mere bar of limitation cannot be a justification to reject the application for amendment.

5. At the outset, it is to be noted that none of the decisions of the Apex Court are of no help to the present case, as in those cases the amendment applications were filed at the stage of the suit before the trial court itself. In **Pankaja's case (supra),** the plaintiff had sought to amend the plaint during the pendency of the suit on account of encroachment in the suit property. In **Sampath Kumar's case (supra),** amendment was sought for on account of the fact that during the pendency of the suit and before commencement of the trial, the defendant had forcibly dispossessed the plaintiff. In **Jayanti Roy's case (supra),** amendment was sought for deletion of original paragraph 10 to be substituted by introducing new paragraph in place thereof at the stage of trial in the suit. In **Prem Bakshi's case (supra),** the

amendment application, which was allowed by the trial Court, was sought to be interfered by the High Court and against that order, the parties had approached the Apex Court.

6. The relief under Order VI Rule 17 of the Code of Civil Procedure is in exercise of discretionary power and an application for amendment has to be decided based on the facts of each case. In fact, the Apex Court in **Pankaja's case (supra),** has clearly observed that "If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case."

7. The learned advocate for the petitioners, however, is justified in contending that the lower appellate Court could not have proceeded to deal with the matter on merits in relation to the contents of the pleadings which are proposed to be introduced by way of amendment as that could be done by the Court only after the amendment is allowed and the parties are permitted to lead the evidence in support of the alleged ground of sub-letting. A stranger being found

sitting in the suit shop, whether such a situation would by itself entitle the landlord to seek eviction of the tenant under Section 13(1)(e) of the Bombay Rent, Hotel & Lodging House Rates Control Act, 1947 or not, is itself a disputed issue, and could be gone into only after going through the evidence led by the parties in support of such ground, and it was too premature for the appellate Court to deal with such issue or to make any such observation in that regard. Certainly therefore, the observations in paragraph (1) of the impugned order in that regard are totally uncalled for. Undoubtedly, at the same time, the lower appellate court could have rejected the application for amendment on the ground that the petitioners can file a separate suit in relation to the ground of sub-letting as the cause of action has arisen subsequent to the disposal of the suit. Indeed, the application has been rejected by the lower appellate Court on that ground also. In the circumstances, while confirming the impugned order rejecting the application for amendment on the ground that the petitioners are entitled to file an independent suit in relation to the proposed pleadings, all observations made by the lower appellate Court as regards the merits of the case are liable to be quashed and set aside. Being so, in case

the petitioner files an independent suit based on the proposed pleadings, certainly the court dealing with such suit should not get influenced in any manner by any of the observations made by the lower appellate court while rejecting the application for amendment.

8. With the above observations, the petition fails and is rejected.

9. At this stage, the learned advocate for the petitioners requests for stay of the order passed today at least for a period of three weeks. I do not find any justification for grant of stay, therefore, prayer for stay of this order is rejected.

10. Certified copy be expedited.